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October Term, 1975

No. 75-1242

CITY OF EUCLID, OHIO,
Petitioner,

vs.

ROYAL AMERICAN CORPORATION, *et al.*,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF OHIO

BRIEF OF AMICUS CURIAE THE CITY OF SHAKER HEIGHTS, OHIO

PAUL R. DONALDSON
Director of Law, City of Shaker Heights
3400 Lee Road
Shaker Heights, Ohio 44120
(216) 752-5000
Attorney for Amicus Curiae

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I

INTEREST OF THE AMICUS CURIAE*

The City of Shaker Heights is a duly chartered municipal corporation of the State of Ohio. Like Petitioner City of Euclid, Shaker Heights provides the service of solid waste collection for single and two-family dwellings within the City, but does not provide such service for apartment, condominium, and commercial structures.

The interest of the City in this case is directed to the

* No letters of consent from the petitioner and respondent to the filing of this brief have been obtained since, under Rule 42 (4), *amicus curiae* City of Shaker Heights need not obtain such consent as a political subdivision of a State which is filing an *amicus curiae* brief sponsored by its authorized law officer.

deleterious effect of the decision below upon the finances and capacity to render municipal services of Shaker Heights and all communities. That decision is the judgment of the Ohio Supreme Court entered on December 5, 1975, dismissing the appeal and overruling Appellant-Petitioner City of Euclid's Motion to Certify the Record to review the decision of the Court of Appeals of Cuyahoga County, Ohio, Eighth Appellate District, filed on August 21, 1975, reversing the decision of the Common Pleas Court of Cuyahoga County, Ohio, filed September 5, 1974. The Ohio Court of Appeals, and implicitly the Ohio Supreme Court by declining to review the decision of the Court of Appeals, held that there was no rational basis for the City of Euclid's practice of collecting solid waste from the inhabitants of one and two-family dwellings, and not collecting solid waste from apartment dwellers. Petitioner City of Euclid's *Petition for a Writ of Certiorari*, at A8, A9. The Court of Appeals concluded that such method of waste collection denied equal protection of the law in contravention of the Fourteenth Amendment to the United States Constitution. *Id.* at A8.

II

ARGUMENT

In the decision below, the Ohio Court of Appeals failed to recognize that there are "necessary imbalances" in all facets of municipal services. For instance, a few years ago, a high-rise office building was constructed in Shaker Heights. As a result, the City had to expend public monies to purchase special fire-fighting equipment to enable the City Fire Department to fight a possible holocaust on the upper floors of the high-rise. This is the primary function of the special equipment. It would not have been necessary to purchase said equipment except for the high-rise.

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The City of Shaker Heights plows snow from the parking lots adjacent to shopping and commercial districts. Thus the City is expending tax dollars to benefit private businesspersons. But these expenditures are for the proper public purposes of encouraging local businesspersons to stay in Shaker Heights, and promoting the patronage of local business by the public.

The City of Shaker Heights expends public funds to landscape and beautify various business areas of the City. However, the money spent on such activity has not been, and cannot be, spent in each and every area of the City. It is hoped that all citizens derive some benefit from the improvements, but businesses and those in closer proximity undoubtedly derive more benefits than those located further away from such public improvements.

While the City Health Department attends to all matters concerning the public health, its budget necessarily is being expended more upon inspection of health and sanitary facilities in commercial districts (i.e., restaurants, foodstores, etc.), than those in residential areas. Almost 80% of local real property taxes are used to support the public schools. Yet many real property taxpayers have no children in public school or have any children at all.

What these few examples point out are that municipal services do not lend themselves to ready "balancing" techniques. In the scheme of local government, all taxpayers are expected to pay their fair share of tax money. These monies are returned to the public by the duly elected local officials in the form of good faith allocations of municipal services.

Certainly if the criteria used by local officials in determining municipal service allocations are clearly based upon bad faith rationales, like suspect classifications such as race, then municipal services are being administered in a manner violative of equal protection. See *Hawkins v.*

Town of Shaw, 437 F.2d 1286 (5th Cir. 1971). But certainly no reasonable individual would posit, for equal protection purposes, that a person having no children in public school should not pay that portion of local real property taxes allocated to schools, or that a person having less need of municipal services than another should have a lower real property tax rate. A legislative body may select one phase of one field and apply a remedy there, neglecting the others. See *Jefferson v. Hackney*, 406 U.S. 535 (1972). "The Equal Protection Clause does not require that a State must choose between attacking every aspect of a problem or not attacking the problem at all." *Dandridge v. Williams*, 397 U.S. 471, 486-87 (1970).

In a holding most directly on point to the case at hand, the New Jersey Supreme Court set forth that

> "[n]o case has ever held that a municipality electing to furnish garbage removal services at municipal expense must provide means and facilities which are all inclusive and will insure collection of all garbage and refuse produced in the municipality. All cases which have dealt with the issue have ruled to the contrary. * * * [Citing several cases]."

Pleasure Bay Apts. v. City of Long Branch, 66 N.J. 79, 328 A.2d 593, 599 (1974).

However, the Ohio Court of Appeals and implicitly the Ohio Supreme Court have taken views directly opposite that of the New Jersey Supreme Court and other jurisdictions which have analyzed the municipal service allocation problem at hand. Ohio has struck down as unconstitutional under the Fourteenth Amendment a municipal ordinance which constitutes a legislative allocation of municipal services.

Petitioner City of Euclid estimates that the solid waste collection for apartments mandated by the Ohio courts will cost its taxpayers an estimated $5.5 million in

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additional operating and capital expenses. City of Euclid's Petition, *supra* at 6 - 7. The population of Shaker Heights is slightly over 36,000, about one-half that of Euclid. Therefore, it can reasonably be said that the additional costs of collection equally mandated for Shaker Heights and all Ohio communities which carry out waste collection practices similar to the City of Euclid will increase proportionately to that of Euclid's cost. Therefore, the Ohio courts have levied an additional "tax" upon the citizens of Shaker Heights of about $2.75 million, and many millions of dollars across the State of Ohio.

The compelling reasons underlying the rational basis for the City of Euclid's waste collection being confined to one and two-family residences was ignored by the Court of Appeals. More importantly, the broad, indefinite reasoning of the Court of Appeals is not confined merely to methods of waste collection when that court's reasoning is carried to its logical conclusion. As set forth by the Court of Appeals, ". . . where a classification prevents a *service* from being available to all persons in like circumstances then the classifications established deny equal protection of the law [emphasis added]." See City of Euclid's Petition, *supra* at A8.

Therefore, it is our position that Ohio now mandates all municipal services, which are generally discretionary in nature, to be parceled out to each and every person, whatever the need or however high the cost. For the municipality to do otherwise is, in the eyes of the Ohio courts, violative of equal protection. This, we feel, is a misinterpretation of equal protection of which this Court should be the final arbiter.

III

CONCLUSION

If this Court permits the decision of the Ohio Supreme Court to stand, it will force Euclid, Shaker Heights, and every other community in a similar position to make the choice of raising its operating and capital expenditures by tens of thousands or even millions of dollars for additional waste collection, or to discontinue waste collection altogether, which it properly may do under Ohio law. The municipal power to collect waste is discretionary in nature. See Ohio Revised Code, § 715.43.

Such a great additional expenditure would sorely burden already strained municipal pocketbooks. The City of Shaker Heights would probably have to discontinue all waste collection, or cut back on other vital municipal services. Its taxpayers will not tolerate additional levies for apartment and commercial waste collection.

Furthermore, the decisions of the Court of Appeals and Ohio Supreme Court are strong precedent for the extension of *all* municipal services in *every* community to *all* situations of imbalance in the service allocation equation. This, we feel, is the true import of the case at hand, and this is why *amicus curiae* City of Shaker Heights respectfully requests the Court to grant the Petition for Writ of Certiorari.

Respectfully submitted,

PAUL R. DONALDSON
Director of Law,
City of Shaker Heights
Attorney for Amicus Curiae

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